

81st CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1895

ENHANCING FURTHER THE SECURITY OF THE UNITED STATES
BY PREVENTING DISCLOSURES OF INFORMATION CONCERNING
THE CRYPTOGRAPHIC SYSTEMS AND THE COMMUNICATION
INTELLIGENCE ACTIVITIES OF THE UNITED STATES

APRIL 6, 1950.—Referred to the House Calendar and ordered to be printed

Mr. WALTER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 277]

The Committee on the Judiciary, to whom was referred the bill (S. 277) to enhance further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication intelligence activities of the United States, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to prevent the revelation of important information about the United States communication intelligence activities and United States codes and ciphers by persons who disclose such information without proper authority, and to prescribe penalties to those knowingly and willfully revealing such information.

GENERAL INFORMATION

This bill makes it a crime to reveal the methods, techniques, and matériel used in the transmission by this Nation of enciphered or coded messages. It does not control in any way the free dissemination of information which might be transmitted by code or cipher. Further, it makes it a crime to reveal methods used by this Nation in breaking the secret codes of a foreign nation. It also prohibits under certain penalties the divulging of any information which may have come into this Government's hands as a result of such a code-breaking. The reason for the latter prohibition is to prevent the indication to a foreign nation that we may have broken their code system.

At present two other acts protect this information, but only in a limited way. These are the Espionage Act of 1917 (40 Stat. 217) and the act of June 10, 1933 (48 Stat. 122). Under the first, unauthorized revelation of information of this kind can be penalized only if it can be proved that the person making the revelation did so with an intent to injure the United States. Under the second, only diplomatic codes and messages transmitted in diplomatic codes are protected. The present bill is designed to protect against knowing and willful publication or any other revelation of all important information affecting United States communication intelligence operations and all direct information about all United States codes and ciphers.

As the matter now stands, prevention of the disclosure of information of our cryptographic systems, exclusive of State Department codes, and of communication intelligence activities rests solely on the discretion, loyalty, and good judgment of numerous individuals. During the recent war there were many persons who acquired some information covered by this bill in the course of their duties. Most of these individuals are no longer connected with the services and are not now prohibited from making disclosures which can be most damaging to the security of the United States. They are subject to the temptations of personal gain and of publicity in making sensational disclosures of the personal information within the purview of this act.

The purpose of the bill is well summarized in the quotation from the Joint Congressional Committee for the Investigation of the Attack on Pearl Harbor, which recommended, on page 253 of the report, that—

* * * effective steps be taken to insure that statutory or other restrictions do not operate to the benefit of an enemy or other forces inimical to the Nation's security and to the handicap of our own intelligence agencies. With this in mind, the Congress should give serious study to, among other things, * * * legislation fully protecting the security of classified matter.

This bill is an attempt to provide just such legislation for only a small category of classified matter, a category which is both vital and vulnerable to an almost unique degree.

Earlier versions of this same bill (S. 805, 79th Cong.; S. 1019, 80th Cong.; and S. 2680, 80th Cong.) would have penalized the revelation or publication, not only of direct information about United States codes and ciphers themselves but of information transmitted in United States codes and ciphers. This provision is not included in the present version. Under the bill as now drafted there is no penalty for publishing the contents of United States Government communications (except, of course, those which reveal information in the categories directly protected by the bill itself). Even the texts of coded Government messages can be published without penalty as far as this bill is concerned, whether released for such publication by due authority of a Government department or passed out without authority or against orders by personnel of a department. In the latter case, of course, the Government personnel involved might be subject to punishment by administrative action but not, it is noted, under the provisions of this bill.

The bill, while carefully avoiding the infringement of civil liberties, extends the protected field covered by the extremely narrow act of June 10, 1933 (48 Stat. 122), the latter being of far too limited application to afford to certain highly secret Government activities the protection which they need. The need for protection of such information is

illustrated by an account of the very circumstances which surrounded the enactment of the act of June 10, 1933. In 1931 there had been published in the United States a book which gave a detailed account of United States successes in breaking Japanese diplomatic codes during the decade prior to publication. In 1933 it was learned that the same author had already placed in the hands of his publishers the manuscript of another book which made further detailed revelations of United States success in the breaking of foreign diplomatic codes. Immediate action secured the passage by the Congress of the measure of June 10, which effectively stopped publication of the second book. Unfortunately, the first book had done, and continued to do, irreparable harm. It had caused a furor in Japanese Government circles, and Japanese diplomatic codes had been changed shortly after its appearance. The new codes were more complex and difficult to solve than the old ones, and throughout the years from then until World War II not only the Japanese diplomatic cryptographers but the military and naval cryptographers as well were obviously devoting more study to cryptography than they ever had before. In 1934 they introduced their first diplomatic machine cipher. Year by year, their codes and ciphers improved progressively by radical steps, and United States cryptanalysts had more and more difficulty and required more and more time to break them. It can be said that United States inability to decode the important Japanese military communications in the days immediately leading up to Pearl Harbor was directly ascribable to the state of code-security consciousness which the revelations of a decade earlier had forced on Japanese officialdom.

ANALYSIS OF THE BILL

The bill would make it a crime, punishable by not more than \$10,000 fine, or 10 years' imprisonment, or both, to knowingly and willfully reveal two categories of information, namely; (1) information which would nullify the efforts of United States communication intelligence agencies, and (2) information which would permit foreign governments to read the secret official communications of the United States. Information of the first category is covered by the following phrases (qualifying "information"):

* * * concerning the nature, preparation, or use of any code, cipher, or cryptographic system of * * * any foreign government.
 * * * concerning the design, construction, use, maintenance, or repair of any device, apparatus, or appliance used or prepared or planned for use by * * * any foreign government.
 * * * concerning the communication intelligence activities of the United States or any foreign government.
 * * * obtained by the processes of communication intelligence from the communications of any foreign government.

Information of the second category is covered by inclusion of the words, "the United States or" in the first, second, and third of the phrases quoted above. The bill does not prohibit the publication or disclosure of United States Government messages in general.

In addition, it should be noted that the restrictions on disclosure apply only to the types of classified information defined in the phrases quoted above. The bill specifies that the classification must be in fact in the interests of national security.

RECOMMENDATIONS OF THE DEPARTMENTS

There are printed below, letters from the Secretary of Defense and from the Acting Secretary of the Navy to the Speaker of the House of Representatives recommending the enactment of this legislation:

THE SECRETARY OF DEFENSE,
Washington, December 31, 1948.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: Attached is a letter addressed to you by the Acting Secretary of the Navy recommending the enactment of a proposed draft of legislation, also attached, bearing the title "to enhance further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication intelligence activities of the United States."

This legislation has been approved by me for inclusion in the National Military Establishment legislative program for the Eighty-first Congress, first session, and responsibility for handling it on behalf of the Establishment has been placed in the Department of the Navy.

Sincerely yours,

JAMES FORRESTAL.

NAVY DEPARTMENT,
Washington, December 23, 1948.

The honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES,
Washington, D. C.

DEAR MR. SPEAKER: There is transmitted herewith a draft of a proposed bill "to enhance further the security of the United States by preventing disclosures of information concerning the cryptographic systems and the communication intelligence activities of the United States."

The purpose of the proposed bill is to insure further the military security of the United States by providing that the unauthorized disclosure by any person of classified information concerning the cryptographic systems and the communication intelligence activities of the United States shall be a statutory offense.

During the war it was necessary to make a great many matters of a confidential nature accessible to a considerable number of service personnel and employees who have since been severed from their wartime duties and who may fail to safeguard official information which is within their knowledge. Existing laws do not adequately protect the security of information of this character and it is considered of utmost urgency and importance from the standpoint of national security that legislation be enacted which will fully protect the security of classified matter. The Joint Congressional Committee for the Investigation of the Attack on Pearl Harbor recognized this fact and in its report recommended that Congress give serious study, among other things, "to legislation fully protecting the security of classified matter" (p. 253).

The proposed bill represents the combined views of the Army, Navy, Air Force, Central Intelligence Agency, and the Department of State, as to the legislation which is necessary to prevent the unauthorized disclosure of such classified information. The Navy Department is sponsoring this legislation on behalf of all of the foregoing organizations. The proposed bill is identical with S. 2680 (80th Cong., 2d sess.) as reported from the Armed Services Committee.

Earlier versions of the proposed legislation (S. 805, 79th Cong. and S. 1019, 80th Cong.) would have penalized the revelation or publication not only of direct information about United States codes and ciphers themselves but of information transmitted in United States codes and ciphers. This provision is not included in the present version.

The proposed bill extends the protected field covered by the extremely narrow act of June 10, 1933 (48 Stat. 122, 22 U. S. C. 815), which act is of far too limited application to afford to certain highly secret Government activities the protection which they need. The proposed legislation does not in any way control the free dissemination of information which might be transmitted by code or cipher unless the information has been obtained by cryptanalysis.

At present, there are two acts affording limited protection to cryptographic information. These are the Espionage Act of 1917 (50 U. S. C. 31 et seq.), and the above-mentioned act of June 10, 1933. Under the Espionage Act, unauthorized revelation of information can be penalized only if it can be proved that the person making the revelation did so with the intent to injure the United States. Under the 1933 act, only diplomatic codes and messages transmitted in diplomatic codes are protected. The proposed legislation is designed to protect against publication or any other revelation, regardless of intent, of all important information affecting United States communication intelligence operations and all direct information about all United States codes and ciphers.

The Navy Department, in conjunction with the Army, Air Force, Central Intelligence Agency, and the Department of State, strongly recommends the enactment of the proposed bill.

The Navy Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Sincerely yours,

W. JOHN KENNEY,
Acting Secretary of the Navy.

The Senate has amended the bill as recommended by the Departments by including in section 1 of the bill, the words "knowingly and willfully." The purpose of this amendment is to make it clear that it would not be an inadvertent, idle, indiscreet disclosure, but one which was made for the purpose prohibited.

The committee recommends that the bill, S. 277, as amended by the Senate, do pass.

CHANGES IN EXISTING LAW

The entire bill is new legislation.